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ABSTRACT

This federal policy statement outlines policy on provision of education to limited-English-speaking school children. First, it describes briefly the demographics of this population and the academic difficulties faced by them, and the recent federal initiative for broadened educational opportunity, America 2000: An Education Strategy. Then, relevant requirements of Title VI of the Civil Rights Act of 1964 are summarized, and the Department of Education's Office of Civil Rights (OCR) policy on language minority students is chronicled, beginning with a 1970 memorandum and concluding with 1985 and 1991 statements. The final section discusses two general issues of compliance with Title VI provisions: (1) whether there is a need for the district to provide a special language service program to meet the educational needs of all language minority students (an alternative program); and (2) whether the district's alternative program is likely to be effective in meeting the educational needs of its language minority students. Procedures for school districts to use to ensure that their programs are serving this population effectively, and areas that OCR examines to evaluate program effectiveness, are outlined. (MSE)

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The Provision of an Equal Education Opportunity to Limited English Proficient Students

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THE PROVISION OF AN EQUAL EDUCATION OPPORTUNITY TO LIMITED ENGLISH PROFICIENT STUDENTS

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

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INTRODUCTION

In recent years, there has been a surge of immigrants with limited English language skills to the United States. According to the Statistical Abstract of the United States, there were 643,000 legal immigrants in the United States in 1988 and over one million in 1989. The U.S. Department of Education (ED) estimates that there are 2.1 million school children who have limited English language skills which affect their ability to participate effectively in education programs.

The insufficient language proficiency of these students often results in failure in the classroom and in dropping out of school. Many students are either ill-equipped for higher education or lack the required skills to obtain productive employment. If these problems are to be resolved, it is essential that these students have an equal opportunity to benefit from education programs offered by their school districts.

On April 18, 1991, the President announced **AMERICA 2000:** An Education Strategy. It is a bold, complex, and long-range plan designed to move every community toward the six National Education Goals that the President and the Governors adopted in 1990. Consistent with **AMERICA 2000**, the Department of Education's Office for Civil Rights (OCR) has instituted a National Enforcement Strategy designed to help ensure equal education opportunity for all students. Providing equal education opportunity to limited English proficient (LEP) students is one of OCR's National Enforcement Strategies. The goals enumerated in **AMERICA 2000** and the National Enforcement Strategy will help in our nationwide crusade — community by community, school by school — to make America all that it should be.

TITLE VI REQUIREMENTS

The Office for Civil Rights (OCR) within ED has responsibility for enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance.

Title VI of the Civil Rights Act of 1964 states that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Under the Department of Education Title VI regulation (34 C.F.R. Part 100), practices of discrimination which are prohibited, when based on race, color, or national origin, include:

- providing services, financial aid, or other benefits that are different or provided in a different manner;
- restricting an individual's enjoyment of an advantage or privilege enjoyed by others;
- denying an individual the right to participate in federally assisted programs; and
- defeating or substantially impairing the objectives of federally assisted programs.

These Title VI regulatory requirements have been inter-

preted to prohibit denial of equal access to education because of a student's limited proficiency in English. Thus, Title VI protects those students limited in their English language skills such that they are unable to participate in, or benefit from, regular or special education school instructional programs.

OCR's TITLE VI POLICY ON LANGUAGE MINORITY STUDENTS

During the late 1960's, OCR became aware that many school districts made little or no provision for the education of students who were unable to understand the English language, even though there were substantial numbers of such students enrolled in their districts.

In an effort to resolve this problem, on May 25, 1970, the former Department of Health, Education, and Welfare issued a memorandum to school districts with more than 5 percent national origin minority group children entitled the *Identification of Discrimination and Denial of Services on the Basis of National Origin.* It is known informally as the May 25th Memorandum. The purpose of the May 25th Memorandum was to clarify Title VI requirements concerning the responsibility of school districts to provide equal education opportunity to language minority students.

The May 25th Memorandum stated in part:

> Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the

language deficiency in order to open its instructional program to these students.

Although the May 25th Memorandum required school districts to take affirmative steps, it did not prescribe the content of these steps. However, the Memorandum explained that Title VI is violated if:

- students are excluded from effective participation in school because of the inability to speak and understand the language of instruction;

- national origin minority students are misassigned to classes for the mentally retarded because of their lack of English skills;

- programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or operate as a dead-end track; or

- parents whose English is limited do not receive notices and other information from the school in a language they can understand.

In the 1974 *Lau* v. *Nichols* case, the U.S. Supreme Court upheld the May 25th Memorandum as a valid interpretation of the requirements of Title VI.

In December 1985, OCR issued a document entitled "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," which outlines OCR policy with regard to the education of language minority students and Title VI compliance standards. On September 27, 1991, OCR issued an update to this document entitled "Policy Update on

Schools' Obligations Toward National Origin Minority Students with Limited English Proficiency (LEP students)."

The May 25th Memorandum and the December 1985 and September 1991 documents explain the relevant legal standards for OCR policy concerning discrimination on the basis of national origin in the provision of education services to LEP students at the elementary and secondary level.

TITLE VI COMPLIANCE ISSUES

When investigating complaints and conducting compliance reviews of school districts regarding equal education opportunity for limited English proficient students, OCR considers two general issue areas:

- whether there is a need for the district to provide a special language service program to meet the education needs of all language minority students (an alternative program); and

- whether the district's alternative program is likely to be effective in meeting the education needs of its language minority students.

The question of need for an alternative program is resolved by determining whether language minority students are able to participate effectively in the regular instructional program. When they are not, the school district must provide an alternative program. In cases where the number of these students is small, the alternative program may be informal.

Educators have not reached consensus about the most effective way to meet the education needs of LEP students.

Many factors affect the types of education programs that school districts may offer, including the number of students and/or the variety of languages involved.

Consequently, OCR allows school districts broad discretion concerning how to ensure equal education opportunity for language minority students. OCR does not prescribe a specific intervention strategy or type of program that a school district must adopt to serve language minority students, nor does OCR require school districts to teach students in their primary language. A number of educational approaches may reasonably be expected to ensure the effective participation of limited English speaking students in the total education program. Thus, school districts have the flexibility to decide on the education approach that best meets the needs of their language minority students. Examples of acceptable approaches include English as a Second Language, Transitional Bilingual Education, Developmental Bilingual Education and Structured Immersion. The law requires effective instruction which leads to the timely acquisition of proficiency in English.

The following procedures should be used by school districts to ensure that their programs are serving limited English proficient (LEP) students effectively:

- identifying students who need assistance;
- developing a program which, in the view of professional educators, has a reasonable chance for success;
- ensuring that needed staff, curricular materials, and facilities are in place and used properly;

- developing appropriate evaluative standards for measuring the progress of students, including program exit criteria; and

- continued program assessment and modification where needed.

In considering whether there is a need for the district to provide a special language service outside of the regular program and whether the alternative program is likely to be effective, OCR examines some important issues listed below.

- **Whether a district has identified all LEP students who need special language assistance.**

  A school district must be able to account for all of its LEP students. A small district may be able to do this informally; a large one, or one with a large number of students whose first language is not English, must have some system for identifying students who may need assistance.

- **Whether a district has ensured the placement of LEP students in appropriate programs.**

  Once a school district has identified students who may need assistance, it must determine what types of assistance are warranted. Therefore, the school district must have a method of determining how well LEP students can presently use English.

- **Whether all LEP students who need a special language assistance program are being provided such a program.**

  After a school district has decided that a student needs assistance, it must determine what kind of special language service program is to be provided, and must implement the program.

- **Whether a district has taken steps to modify a program for LEP students when that program is not working.**

  If the district's special language services program is not successful after a reasonable time period, the district is expected to take steps to determine the cause of the program's failure and to modify it accordingly.

- **Whether a district ensures that LEP students are not misassigned to classes for mentally handicapped students because of their inability to speak and understand English.**

  When tested in English, students who cannot use the English language well are often unable to demonstrate how skilled they really are. Steps must be taken to ensure that LEP students are not assigned to special education classes because they cannot use the English language, rather than because they are handicapped. Such steps may include: assessing the student in his or her own language; ensuring that accurate informa-

tion regarding the student's language skills is taken into account in evaluating assessment results; and comparing results obtained when a part of the assessment is repeated in the student's first language.

- **Whether a school district ensures that parents who are not proficient in English are provided with appropriate and sufficient information about all school activities.**

  School districts have the responsibility to effectively notify national origin minority group parents of school activities which are called to the attention of other parents. Such a notice, to be effective, may have to be provided in a language other than English.

CONCLUSION

In viewing a school district's compliance with Title VI regarding effective participation of language minority students in the education program, OCR does not require schools to follow any particular educational approach. The test for legal adequacy is whether the adopted strategy works -- or promises to work -- on the basis of past practice or in the judgment of experts in the field.

OCR examines all available evidence in order to determine that the strategy ensures the effective participation of its language minority students.

FOR ADDITIONAL INFORMATION

OCR is prepared to provide technical assistance to beneficiaries and educators in meeting the requirements of Title VI. Anyone wishing additional information regarding the provision of equal education opportunity to LEP students may contact the OCR regional office serving his or her state or territory. The addresses and telephone numbers of the regional civil rights offices are enclosed.

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